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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Adams, et al.

Title: SYSTEM FOR AND METHOD OF ADJUSTING TEMPO TO MATCH
AUDIO EVENTS TO VIDEO EVENTS OR OTHER AUDIO EVENTS
IN A RECORDED SIGNAL

Docket No.: 035774-0103

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

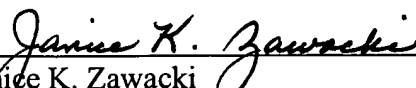
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- *Response to Notification of Non-Compliant Appeal Brief (37 CFR 41.37) Transmittal
- *Brief on Appeal (revised) (23 Pages)
- *Copy of the Notification of Non-Compliant Appeal Brief (37 CFR 41.37)
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Enclosed for filing please find the above-referenced documents. Please indicate receipt of this utility patent application by returning the attached postcard with the official Patent and Trademark Office receipt stamped thereon.


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Atty. Dkt. No. 035774-0103

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dennis J. Adams

Title: SYSTEM FOR AND METHOD
OF ADJUSTING TEMPO TO
MATCH AUDIO EVENTS TO
VIDEO EVENTS OR OTHER
AUDIO EVENTS IN A
RECORDED SIGNAL

Appl. No.: 09/882,646

Filing Date: 06/15/2001

Examiner: Cuong T. Thai

Art Unit: 2173

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT
APPEAL BRIEF (37 CFR 41.37) TRANSMITTAL**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) in the above-identified application, enclosed for filing are the following documents:

- * Revised Appeal Brief
- * Copy of the Notification of Non-Compliant Appeal Brief
- * Express Mail Certificate
- * Return Postcard

Applicant believes no fee is due. If for any reason, a fee is deemed to be due, authorization is hereby given to charge any deficiency (or credit any balance) to Deposit Account No. 50-2350.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date May 20, 2005

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Atty Dkt. No. 035774-0103 (f/k/a 070156-0148)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Adams, et al.

Title: System For And Method Of
Adjusting Tempo To Match Audio
Events To Video Events Or Other
Audio Events In A Recorded Signal

Appl. No.: 09/882,646

Filing Date: 06/15/2001

Examiner: Thai, Cuong T.

Art Unit: 2173

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

This Appeal Brief is being filed in response to a Notification of Non-Compliant Appeal Brief mailed April 29, 2005. Because this new brief is being filed within one month from the mailing date of the notification, this response is timely. As a result, Appellants believe no fee is due. If, for any reason, a fee is deemed to be due, authorization is hereby given to charge any deficiency (or credit any balance) to deposit account 50-2350.

This paper is being filed in response to the final Office Action dated November 9, 2004, finally rejecting Claims 1-26. The Notice of Appeal was filed on December 20, 2004. Appellants respectfully request reconsideration of the application.

REAL PARTY IN INTEREST

This application has been assigned of record to Sony Pictures Digital, Inc., having a place of business at 10202 W. Washington Blvd., Culver City, CA 90232. The assignment was recorded in the records of the United States Patent and Trademark Office at Reel/Frame 014441/0734 on September 2, 2003.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

This is an appeal from the final Office Action dated November 9, 2004, finally rejecting Claims 1-26. Claims 1-26 are therefore on appeal.

STATUS OF AMENDMENTS

No claims have been amended in the present application subsequent to the receipt of the final Office Action dated November 9, 2004.

SUMMARY OF CLAIMS SUBJECT MATTER

The present application relates to computerized signal processing methods and systems and includes independent claims 1, 10, 15, and 21. Claim 10 and claims 11-14 include means plus function elements. Each independent claim and claims 11-14 that include means plus function elements are summarized below.

Claim 1 is a method of adjusting tempo of an audio recording to match audio events to video or other audio events in an audio-visual recording. The method includes receiving a reference indicating a location in a recorded signal and providing a tempo for an audio recording to be at least partially included in the recorded signal. The reference is indicative of a desired audio tempo change location in the recorded signal. The tempo is adjusted to fit the audio recording to a section of the recorded signal marked by the reference.

In exemplary embodiments, time marker 170, location marker 370, time marker 570, and location 574 are references indicating a location in a recorded signal. (See present application, page 9, paragraph [0031], FIG. 1; page 10, paragraph [0034], FIG. 3; and pages 10-11, paragraphs [0037]-[0038], FIG. 5). In exemplary embodiments, the audio tempo can be adjusted as described in the present application on page 9, paragraph [0031]; page 10, paragraph [0034]; and pages 10-11, paragraphs [0037]-[0038].

Claim 10 is a computer program product for determining the tempo of a portion of music such that one tempo phrase ends and another tempo phrase begins at a frame of video or portion of audio as desired by a user of the computer program product. This system can include means for receiving a reference indicating a location in the recorded signal and means for adjusting a tempo for an audio recording segment to be included in the recorded signal. In exemplary embodiments, time marker 170, location marker 370, time marker 570, and location 574 are references indicating a location in the recorded signal. (See present application, page 9, paragraph [0031], FIG. 1; page 10, paragraph [0034], FIG. 3; pages 10-11, paragraphs [0037]-[0038], FIG. 5).

Means for receiving the references can include programmed instructions in software or hardwired circuitry that receive a signal from a computer input device, such as, a touch pad, a mouse, a keyboard, or any such peripheral device. (See present application, page 6, paragraph [0023], page 7, paragraph [0026], and page 9, paragraph [0032]). In exemplary embodiments, the audio tempo can be adjusted as described in the present application on page 9, paragraph [0031]; page 10, paragraph [0034]; pages 10-11, paragraphs [0037]-[0038]; and pages 11-12, paragraphs [0041]-[0043]. Means for adjusting the tempo can include programmed instructions in software or hardwired circuitry that receive a signal from a computer mouse (or other such computer input device) when a user right clicks on

time marker 170 and selects "Adjust Tempo to Match Marker to Cursor", when a user right clicks on location marker 370 and selects "Adjust Tempo to Match Cursor to Marker", and/or when a user selects a time marker 570 at a particular time location of video or audio and then, holding a key or some computer input, drags time marker 570 to location 574. (See present application, page 9, paragraph [0032]; page 10, paragraph [0035]; page 10, paragraph [0037], respectively).

Claim 11 includes a means for interfacing with a computing device. The interfacing means can include a graphical representation of the recorded signal in a graphical user interface. Graphical user interface sections shown and described as reference numbers 122, 124, 126, 128, 322, 324, 326, 328, 522, 524, 526, and 528 provide graphical representation of the recorded signal. (See present application, FIGs. 1, 3, and 5).

Claim 12 includes a means for receiving an indication of a beginning and an end of the audio recording segment. In an exemplary embodiment, the means for receiving includes programmed instructions in software or hardwired circuitry that receive a signal from a computer mouse (or other such computer input device) when a user selects a time marker 570 indicating a beginning at a particular time location of video or audio, and then, holding a key or some computer input, drags time marker 570 to location 574 indicating an end. (See page 10, paragraph [0037], FIG. 5).

Claim 13 includes a means for displaying video thumbnails of video images in the recorded signal on a means for interfacing with a computing device. The displaying means can include a display 100, 300, 500 that provides track view section 120, 320, 520 including video file 122, 322, 522 thumbnails. (See present application, FIGs. 1, 3, and 5).

Claim 14 includes a means for displaying audio representations. The displaying means can include graphical user interface sections shown and described as

reference numbers 124, 126, 128, 324, 326, 328, 524, 526, and 528 display audio representations of recorded signals. (See present application, FIGs. 1, 3, and 5).

Claim 15 is directed to a processing system that can include a central processing unit (CPU) and a storage device coupled to a processor and having stored thereon information for configuring the CPU. The CPU can be configured to perform the operations of the method. In an exemplary embodiment, the CPU executes sequences of instructions contained in a memory. (See present application, page 6, paragraph [0023]). In an exemplary embodiment, the storage device is a memory such as a random access memory, a read-only memory, a mass storage device, or some other persistent storage. (See present application, page 6, paragraph [0023]).

Claim 21 is directed to a graphical user interface configured to display representations of audio signals and video signals and to provide for creation of an audio or an audio visual production using a plurality of audio or video recordings. The graphical user interface can include a first graphical display area on which graphical representations of a first audio recording can be displayed, a second graphical display area on which graphical representations of a second audio or video recording can be displayed, and a reference marker which is configured to be selectively located by a user. The reference marker can be used to adjust the tempo of at least a portion of the first audio recording. The tempo adjustment fits the first audio recording to a section of the second audio or video recording.

In exemplary embodiments, the first and second graphical display area are shown and described as reference numbers 122, 124, 126, 128, 322, 324, 326, 328, 522, 524, 526, and 528. (See present application, FIGs. 1, 3, and 5). In exemplary embodiments, time marker 170, location marker 370, time marker 570, and location 574 are reference markers selectively located by a user. (See present application, page 9, paragraph [0031], FIG. 1;

page 10, paragraph [0034], FIG. 3; pages 10-11, paragraphs [0037]-[0038], FIG. 5). In exemplary embodiments, the tempo adjustment can be adjusted as described in the present application on page 9, paragraph [0031]; page 10, paragraph [0034]; and pages 10-11, paragraphs [0037]-[0038].

ISSUES

In the Office Action dated November 9, 2004, Claims 1-26 were rejected as unpatentably obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 5,642,171 (Baumgartner et al.) in view of U.S. Patent No. 6,188,396 (Boezeman et al.). The overall issue on appeal is whether the Office Action has established a prima facie case of obviousness. The underlying issues are whether there is any suggestion or motivation to combine the Baumgartner et al. and Boezeman et al. references and whether the Baumgartner et al. and Boezeman et al. references, alone or in combination, teach or suggest all of the limitations of Claims 1-26.

ARGUMENT

I. LEGAL STANDARD FOR OBVIOUSNESS

In the present application, Claims 1-26 have been rejected under 35 U.S.C. § 103(a), which states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The legal standards under 35 U.S.C. § 103(a) are well-settled. Obviousness under 35 U.S.C. § 103(a) involves four factual inquiries: (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary

skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. See Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). “[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).

As noted by the Federal Circuit, the “factual inquiry whether to combine references must be thorough and searching.” McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 60 USPQ.2d 1001 (Fed. Cir. 2001). Further, it “must be based on objective evidence of record.” In re Lee, 277 F.3d 1338, 61 USPQ.2d 1430 (Fed. Cir. 2002). The teaching or suggestion to make the claimed combination must be found in the prior art, and not in the applicant’s disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ.2d 1430 (Fed. Cir. 1990). “It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to ‘[use] that which the inventor taught against its teacher.’” Lee (citing W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983)).

II. REJECTION OF CLAIMS 1-26 UNDER 35 U.S.C. § 103(a)

In Section 4 of the Office Action dated November 9, 2004, the Examiner rejected Claims 1-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,642,171 to Baumgartner et al. in view of U.S. Patent No. 6,188,396 to Boezeman et al. This rejection is the only rejection made by the Examiner. Further, Baumgartner et al. and Boezeman et al. are the only references cited by the Examiner to support the rejection. For the reasons given below, the Appellants submit that the Examiner's rejection of Claims 1-26 is improper and should be reversed.

A. The Examiner's Rejection of Claims 1-20 Should be Reversed Because Baumgartner et al. and Boezeman et al. do not Combine to Teach or Suggest All of the Claim Limitations

An obviousness rejection cannot be properly maintained where the references used in the rejection do not disclose all of the recited claim elements. Independent claims 1, 10, and 15 all require "tempo being adjusted to fit the audio recording to a section of the recorded signal." Specifically, Claim 1 recites:

providing a tempo for an audio recording to be at least partially included in the recorded signal, the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.

Claim 10 recites:

means for providing a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

Claim 15 recites:

provide a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

Neither Baumgartner et al. nor Boezeman et al. disclose, suggest, or teach “**the tempo being adjusted to fit the audio recording to a section of the recorded signal**” marked by the reference.” The Examiner disagrees.

With respect to claims 1, 10, and 15, the Examiner states on page 3 of the Office Action of November 24, 2003, that Baumgartner et al. “does not disclose the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference.” Appellant agrees with the Examiner that Baumgartner et al. does not provide this teaching. Baumgartner et al. discloses a method of synchronizing audio and video streams during a multimedia presentation. (See Baumgartner et al., Abstract.) Baumgartner et al. further discloses that “no synchronization information need be present in the separated audio and video data streams.” (See Baumgartner et al., Col. 6, lines 30-33.) For further clarification, Baumgartner et al. discloses:

The synchronization method ... is called periodically during a multimedia display to synchronize the video and audio streams. The synchronization method compares the video and audio frame positions and computes a synchronization error value, which is essentially the number of frames by which the video frame position is in front of or behind the current audio frame position.

(Baumgartner et al., Col. 6, lines 39-55.)

Thus, the tempo is adjusted as the video and audio play to allow one to keep up with the other. As a result, the tempo is not **adjusted to fit the audio recording to a section of the recorded signal**. Thus, Baumgartner et al. “does not disclose the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference” as admitted by the Examiner.

The Examiner points to Boezeman et al. as providing this teaching. Specifically, the Examiner states:

Boezeman discloses the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference as the technique of a Sequence Editor which during the course of the animation, a pieces of audio [sic] is also played. At the simulation ending of the animation and audio, a video plays (see col. 6, lines 58-62 and see Fig. 3-17).

(Office Action of November 24, 2003, page 3.)

Appellant respectfully disagrees. Boezeman et al. only discloses “[d]uring the course of the animation, a piece of audio is also played.” (See Boezeman et al., Col. 6, lines 57-58, Figs. 6-17.) Boezeman et al. further discloses “that the animation player part and the audio player part will start and stop simultaneously. Since the audio was only about 30 seconds in length, the audio will obviously have to be **replayed** to reach the 100 second length of the animation.” (See Boezeman et al., Col. 7, lines 61-65 and Fig. 10, Emphasis added). Thus, Boezeman et al. teaches away from “the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.”

Boezeman et al. further discloses:

it may be desired to have the second half of the video played at twice the normal speed. ... To accomplish this, a developer would select the rate spacer Although it is not part of the present invention, ... a dialog box would appear to query the developer for the rate required. The second half of the video would then play at the new rate.

(Boezeman et al., Col. 9, lines 56-68, Fig. 15.)

Thus, though the developer is allowed to **specify** a new rate for the media, the rate is not “adjusted to fit the audio recording to a section of the recorded signal marked by the reference.” Therefore, Boezeman et al. does not disclose the limitation of providing a tempo

for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference” contrary to Examiner’s argument.

In the Office Action mailed April 4, 2004, the Examiner argues:

Baumgartner also discloses the tempo being adjusted to fit the audio recording as the technique of the method adjusts the audio tempo to maintain synchronization (see col. 6, lines 60-61) or of the method of maintains [sic] synchronization by adjusting audio tempo (see col, 12, lines 40-41).

Baumgartner, however, does not disclose the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference.

Boezeman discloses the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference as the technique of a Sequence Editor which during the course of the animation, a pieces of audio [sic] is also played. At the simulation ending of the animation and audio, a video plays (see col. 6, lines 58-62 and see Fig. 3-17).

(Office Action of April 21, 2004, page 3, underlining in original.)

Appellant again disagrees. Baumgartner et al. does not adjust the tempo to fit the audio recording to a section of the recorded signal. Adjusting the audio tempo to maintain synchronization is not adjusting the tempo to fit the audio recording to a section of the recorded signal. Baumgartner et al. adjusts the tempo to maintain lip synchronization of the video stream of a presentation with the audio stream of the presentation. “The synchronization method compares the video and audio frame positions and computes a synchronization error value, which is essentially the number of frames by which the video frame position is in front of or behind the current audio frame position.” (See Baumgartner et al., Col. 6, lines 51-55.) As a result, Baumgartner et al. does not fit the audio recording to a

section of the recorded signal. Boezeman et al. repeats the audio at the same tempo to fit the audio to the animation using the co-occur tool. (See Boezeman et al., Col. 7, lines 58-65.) As a result, Boezeman et al. does not adjust the tempo to fit the audio recording to a section of the recorded signal.

In the Office Action mailed November 9, 2004, the Examiner again argues:

... Baumgartner discloses the limitation of the tempo being adjusted to fit the audio recording as the technique of the method adjusts the audio tempo to maintain synchronization [sic] (see col. 6, lines 60-61) or of the method of maintains synchronization by adjusting audio tempo [sic] (see col. 12, lines 40-41). Baumgartner lacks of providing a tempo for an audio to be at least partially included in the recording signal.

(Office Action of November 9, 2004, page 19, boldface and underlining in original.)

For the reasons related above, Baumgartner et al. does not fit the audio recording to a section of the recorded signal. Baumgartner et al. discloses “synchronizing the audio and vide data streams during a multimedia presentation to provide a correctly synchronized presentation.” (See Baumgartner et al., Col. 7, lines 25-27). In synchronizing the media streams, the tempo is not adjusted to fit the audio recording to a section of the recorded signal.

In the Office Action mailed November 9, 2004, the Examiner also again argues:

Boezeman, on the other hand, discloses the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference as the technique of a **Sequence Editor** which during the course of the animation, a pieces of audio [sic] is also played. At the simulation ending of the animation and audio, a video plays (see col. 6, lines 58-62 and see Fig. 3-17). *Specially, the synchronization of the audio and the animation via the co-occur tool in an implementation of specifying both the starting and ending time of the audio with respect to the animation. The synchronization of the video and animation via the meet*

tool is an implementation of specifying the starting of the video with respect to the ending time of the animation (see Boezeman's col. 8, lines 34-40). **Thus by using Boezeman's graphically Sequence Editor as reference mark; Audio, Video, Animation, Events, and Images can be synchronized with respect to starting time and ending time which allows the developer a great deal of flexibility. The sequence editor, in turn, would provide for the developer a view of the multimedia events from the perspective of its time structure as opposed to available data flow or user interface perspective.**

(Office Action of November 9, 2004, pages 19-20, boldface and underlining in original, italics added.)

The Examiner relies on col. 8, lines 34-40 in Boezeman et al. and the description of the "co-occur" tool to support the rejection. The "co-occur" tool, according to Boezeman et al., "causes two parts to automatically start and stop at the same time." (See Boezeman et al., Col. 2, lines 54-55.) However, the "co-occur" tool described in Boezeman et al. performs a completely different operation than that recited in Claims 1, 10, and 15. At Col. 7, lines 55-65 of Boezeman et al. states:

As was stated in the real world example above, the animation and audio were to start and stop at the same time. By utilizing the present invention, the developer may simply ensure that this occurs. Referring to FIG. 10, by selecting first the animation player play area 131 and then the audio player play area 143 and then the co-occur tool 70, **it is ensured that the animation player part and the audio player part will start and stop simultaneously**. Since the audio was only about 30 seconds in length, **the audio will obviously have to be replayed** to reach the 100 second length of the animation.

(Emphasis added.) Thus, Boezeman et al. does not make any adjustments to the tempo of the audio to have it fit within a section of animation, rather the audio is **replayed** so that the time duration of the audio matches that of the animation. While the **duration** of audio (i.e., the number of times the audio is played) may be adjusted by the system described in Boezeman

et al., there is no discussion or suggestion of adjusting the tempo “to fit the audio recording to a section of the recorded signal.”

As indicated above, an obviousness rejection cannot be properly maintained where the references used in the rejection do not disclose all of the recited claim elements. Claims 2-9 depend from Claim 1, Claims 11-14 depend from Claim 10, and Claims 16-20 depend from Claim 15. Claims 1-20, thus, all require “providing a tempo for an audio recording to be at least partially included in the recorded signal, the tempo being adjusted to fit the audio recording to a section of the recorded signal.” Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of Claims 1-20.

B. The Examiner’s Rejection of Claims 21-26 Should be Reversed Because Baumgartner et al. and Boezeman et al. do not Combine to Teach or Suggest All of the Claim Limitations

Claims 21-26 also require claim limitations not disclosed or suggested by the combination of Baumgartner et al. and Boezeman et al.. Independent claim 21 requires “the reference marker being used to adjust the tempo of at least a portion of the first audio recording.” Specifically, Claim 21 recites:

a reference marker which is configured to be selectively located by a user, the reference marker being used to adjust the tempo of at least a portion of the first audio recording, the tempo adjustment being provided to fit the first audio recording to a section of the second audio or video recording.

As discussed in Section A above with reference to Claims 1-20, neither Baumgartner et al. nor Boezeman et al. disclose, suggest, or teach adjusting the tempo of at least a portion of an audio recording to “fit the first audio recording to a section of the second audio or video recording.” In the Office Action, the Examiner points to Figure 10 of Boezeman et al. as showing the fitting of a first audio recording to a section of a second audio or video

recording. (See Office Action, page 5.) However, Figure 10 illustrates the operation of the “co-occur” tool, which—as explained above—does not “fit” the audio by adjusting the tempo. The “co-occur” tool fits the audio to a section by **replaying the audio** as many times as is necessary to match the recordings. Boezeman et al. describes repeating an audio segment 3.3 times to fill an entire 100 second length of animation. (See Boezeman et al., Col. 7, lines 61-65 and Fig. 10.) The tempo is **not** adjusted to fit the audio recording to a section of the recorded signal marked by the reference as recited, for example, by Claim 21.

Baumgartner et al. and Boezeman et al. fail to combine to disclose, suggest, or teach **adjusting** the tempo of at least a portion of an audio recording to “fit the first audio recording to a section of the second audio or video recording.” Accordingly, Applicants respectfully request withdrawal of the rejection of Claim 21 and its dependent claims, Claims 22-26.

C. The Examiner’s Rejection of Claims 1-26 Should be Reversed Because There is No Suggestion to Combine the Teachings of Baumgartner et al. with Those of Boezeman et al.

To establish a prima facie case of obviousness based on a combination of prior art references under 35 U.S.C. § 103(a), the Examiner must first show that there is a suggestion or motivation to combine the teachings of those references. This may come in the form of some objective teaching in the prior art or, alternatively, knowledge generally available to one of ordinary skill in the art at the time of the invention that would lead that individual to combine the relevant teachings of the references.

When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to explain why the combination of the teachings is proper. Ex parte Skinner, 2 USPQ.2d 1788 (Bd. Pat. App. & Inter. 1986). In this case, the Examiner has not shown – and indeed, cannot show – that there would have been any

motivation or suggestion to one of skill in the art to combine the teachings of Boezeman et al. and Baumgartner et al. In support of the obviousness rejection, the Examiner states:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include Boezeman's teachings of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference into that of Baumgartner's adjusted tempo invention. By doing so, the system would be enhanced by providing a **graphically editor** to an end user wherein the user can **graphically perform editing and synchronizing** audio and video as well as animation tool based on user's desired taste.

(Page 18 of the Office Action, dated November 9, 2004, boldface in original.) Appellants respectfully disagree. Neither reference provides a suggestion to combine the processing technique of Baumgartner et al. and the multi-media editor of Boezeman et al.

Boezeman et al. describes a multimedia application that a human application developer might use to create a production "from parts on a scene that have been selected previously." (Col. 5, lines 40-41). Boezeman et al. states:

The sequence editor is a mechanism that allows a user to synchronize relative time, absolute time and event time together in an easy to use manner. **The solution assumes that items for synchronization (such as an animation, video, audio, image) have been previously identified and selected by a user.**

(Boezeman et al., Col. 5, lines 47-52, Emphasis added). Boezeman et al. requires interaction with the user to operate. (See, for example, Boezeman et al., Col. 7, lines 5-6, lines 11-13, lines 23-25, lines 32-33, lines 41-43, and lines 52-53.) The user of the system described by Boezeman et al. selects saved multimedia files and builds a new production from them. Instead of relying on a developer to build a new production as described in Boezeman et al., Baumgartner et al. describes a computer system that "synchronizes the audio and video data

streams **during** a multimedia presentation to ensure that the appropriate sounds are generated by the speaker 132 when the corresponding images are being displayed by the video monitor 122.” (Baumgartner et al., Col. 9, lines 9-13).

As a result of their fundamental differences, Baumgartner et al. and Boezeman et al. cannot work together in combination. First, the principal of operation of one is completely different than the principal of operation of the other. Baumgartner et al. automates the synchronization of audio and video data streams during a presentation—avoiding the use of human interaction. Boezeman et al. enables users to create a production from existing multimedia files—enhancing the functionality available using human interaction. Second, a person of skill in the art would not combine a reference describing a production system used to create a presentation (Boezeman et al.) with a reference describing a “method for synchronizing the audio and video data streams **during** a multimedia presentation.” (Baumgartner et al., Col. 7, lines 25-27, emphasis added.)

In conclusion, Appellants respectfully submit that there is no suggestion or motivation to combine the teachings of Baumgartner et al. and Boezeman et al. to obtain the subject matter recited in claims 1-26. Accordingly, it is respectfully submitted that claims 1-26 are patentable under 35 U.S.C. § 103.

CONCLUSION

In view of the foregoing, the Appellants submit that Claims 1-26 are not properly rejected under 35 U.S.C. § 103(a) over the combination of Baumgartner et al., and Boezeman et al. and are patentable.

Accordingly, Appellants respectfully request that the Board reverse all claim rejections and indicate that a Notice of Allowance respecting all pending claims should be issued.

Respectfully submitted,

Date May 19, 2005

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APPENDIX – THE CLAIMS ON APPEAL

1.(Previously Presented) A method of adjusting tempo of an audio recording to match audio events to video or other audio events in an audio-visual recording, the method comprising:

receiving a reference indicating a location in a recorded signal, the reference being indicative of a desired audio tempo change location in the recorded signal; and

providing a tempo for an audio recording to be at least partially included in the recorded signal, the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.

2.(Original) The method of claim 1, wherein the reference is indicative of a time location in the recorded signal to coincide a musical event with a particular frame of video in the recorded signal.

3.(Original) The method of claim 1, wherein the reference is indicative of a location in the audio recording to be synchronized with a cursor time reference located in the recorded signal.

4.(Original) The method of claim 1, further comprising providing a user interface via a computing device, the user interface providing graphical representations of the recorded signal and of the audio recording to be at least partially included in the recorded signal.

5.(Original) The method of claim 4, wherein the graphical representations include an audio waveform, wherein the user interface provides for the selective manipulation of characteristics of the audio waveform.

6.(Original) The method of claim 5, wherein the selective manipulation provided by user interface includes providing for the increase in length of the audio waveform, thereby increasing the duration of the audio recording to be at least partially included in the recorded signal.

7.(Original) The method of claim 1, wherein the step of providing a tempo for an audio recording to be at least partially included in the recorded signal comprises receiving a indication of a beginning and an end of the audio recording segment.

8.(Original) The method of claim 1, further comprising displaying video thumbnails of video images in the recorded signal on a user interface, the user interface having time indications labeling the video thumbnails according to timing of appearance of video images in the recorded signal.

9.(Original) The method of claim 8, further comprising displaying audio representations of the audio recording to be at least partially included in the recorded signal, the audio representations being labeled with the time indications.

10.(Previously Presented) In a computer program product, a system of determining the tempo of a portion of music such that one tempo phrase ends and another tempo phrase begins at a frame of video or portion of audio as desired by a user of the computer program product, the system comprising:

means for receiving a reference indicating a location in a recorded signal; and

means for providing a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

11.(Original) The system of claim 10, further comprising means for interfacing with a computing device, the interfacing means being configured to provide graphical representations of the recorded signal including video images and of the audio recording segment to be included in the recorded signal.

12.(Original) The system of claim 10, wherein the means of providing a tempo for an audio recording segment to be included in the recorded signal comprises means for receiving a indication of a beginning and an end of the audio recording segment.

13.(Original) The system of claim 10, further comprising means for displaying video thumbnails of video images in the recorded signal on a means for interfacing with a computing device, the interface means having time indications labeling the video thumbnails according to timing of appearance of video images in the video.

14.(Original) The system of claim 13, further comprising means for displaying audio representations of the audio recording segment to be included in the recorded signal, the audio representations being labeled with the time indications.

15.(Previously Presented) A processing system comprising:

a central processing unit (CPU); and

a storage device coupled to a processor and having stored there information for configuring the CPU to:

receive a reference indicating a location in a recorded signal; and

provide a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

16.(Original) The system of claim 15, further comprising a presentation device, wherein the presentation device is configured to provide a graphical user interface which presents portions of the recorded signal and the audio recording segment.

17.(Original) The system of claim 15, further comprising an interface device configured to connect the CPU with a network of computers.

18.(Original) The system of claim 15, wherein the storage device having stored files containing video image information.

19.(Original) The system of claim 15, wherein the CPU is further configured to assign the provided tempo to the audio recording segment.

20.(Original) The system of claim 15, wherein the CPU is further configured to save a file to the storage device, the file including information related to the video, the audio recording segment, and the provided tempo.

21.(Previously Presented) A graphical user interface configured to display representations of audio signals and video signals and being further configured to provide for creation of an audio or an audio visual production using a plurality of audio or video recordings, the graphical user interface comprising:

a first graphical display area on which graphical representations of a first audio recording can be displayed;

a second graphical display area on which graphical representations of a second audio or video recording can be displayed; and

a reference marker which is configured to be selectively located by a user, the reference marker being used to adjust the tempo of at least a portion of the first audio recording, the tempo adjustment being provided to fit the first audio recording to a section of the second audio or video recording.

22.(Original) The graphical user interface of claim 21, wherein the reference marker is a location marker indicating a measure location in the first audio recording.

23.(Previously Presented) The graphical user interface of claim 22, wherein the tempo adjustment is performed using the reference marker in the first audio recording and a cursor position in the second audio or video recording.

24.(Original) The graphical user interface of claim 21, wherein the reference marker is a time marker indicating a time location in the second audio or video recording.

25.(Previously Presented) The graphical user interface of claim 24, wherein the tempo adjustment is performed using the reference marker in the second audio or video recording and a cursor position in the first audio recording.

26.(Previously Presented) The graphical user interface of claim 24, wherein the tempo adjustment is performed using the reference marker in the second audio or video recording and a position in the first audio recording to which a user drags the reference marker.



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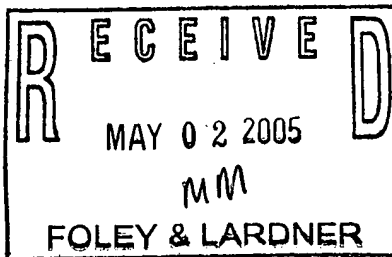
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Please find below and/or attached an Office communication concerning this application or proceeding.

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ACTION (DUE DATE) Response to

Not. of Non-Compliant Appeal
Brief (5/29/05)

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5/2/05

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/882,646

Applicant(s)

ADAMS, DENNIS J.

Examiner

CUONG T. THAI

Art Unit

2173

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 05 January 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):


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